

ESTTA Tracking number: **ESTTA432263**

Filing date: **09/26/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Julius Samann Ltd.
Granted to Date of previous extension	10/02/2011
Address	Victoria Place, 31 Victoria Street Hamilton, HM 10 BERMUDA
Party who filed Extension of time to oppose	Julius SÃmann Ltd. Julius SÃmann Ltd.
Relationship to party who filed Extension of time to oppose	The name is not being changed. The name was entered without the umlaut over the a ("Ã") because the system rejected the non-ASCII character. The opposer's name is Julius SÃmann Ltd.

Attorney information	ROBERTA S BREN OBLON SPIVAK MCCCELLAND MAIER & NEUSTADT LLP, 1940 DUKE STREET ALEXANDRIA, VA 22314 UNITED STATES tmdocket@oblon.com, rbren@oblon.com, bchapman@oblon.com, ndyson@oblon.com, clisenby@oblon.com
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### Applicant Information

Application No	77733444	Publication date	04/05/2011
Opposition Filing Date	09/26/2011	Opposition Period Ends	10/02/2011
International Registration No.	NONE	International Registration Date	NONE
Applicant	Reckitt Benckiser Inc. 399 Interpace Parkway Parsippany, NJ 07054 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Air freshening preparations; air purifying preparations; room air fresheners; air deodorant; preparations for neutralizing odours on carpeting, textiles, surfaces and in the air
Class 011. All goods and services in the class are opposed, namely: Electric and battery powered dispensers for room fragrances, air fresheners and room deodorants for scenting, purifying or freshening the

atmosphere; parts and fittings for all the aforesaid goods sold as a unit therewith
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## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	does not function as a trademark. Trademark Act section 1, 2 and 45

## Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Opposer's bubble design mark		
Goods/Services	air freshening products		

Attachments	77733444-Opposition.pdf ( 8 pages )(569259 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/roberta s. bren/cli/
Name	ROBERTA S BREN
Date	09/26/2011

JULIUS SÄMANN LTD.,	)	
	)	
	)	
Opposer,	)	
v.	)	Opposition No. _____
	)	Application Serial No. 77/733,444
RECKITT BENCKISER LLC,	)	Mark: MISCELLANEOUS DESIGN
	)	
Applicant.	)	
	)	

In the matter of the application for registration of the mark shown below (“Applicant’s bubbles design Mark”) for goods in International Classes 5 and 11, Application Serial No. 77/733,444 filed May 11, 2009, which was published at page TM 20 of the April 5, 2011 *Official Gazette* of the United States Patent and Trademark Office (“USPTO”). The Trademark Trial and Appeal Board (“Board”) granted Julius Sämann Ltd.’s (“Opposer”) requests to extend its time to oppose to October 2, 2011.



Julius Sämann Ltd. is a corporation organized and existing under the laws of Bermuda, at Victoria Place, 31 Victoria Street, Hamilton HM 10, Bermuda, and believes that it will be damaged by registration of the mark shown above, which is the subject of Application Serial No. 77/733,444, and hereby opposes same.

As grounds for Opposition it is alleged as follows:

1. Upon information and belief, Reckitt Benckiser Inc. filed, on May 11, 2009, an application based on Section 1(b) and Section 44(d) of the Trademark Act, 15 U.S.C. §§ 1051(b) and 1126(d), to register Applicant's bubbles design Mark. The application was assigned Serial No. 77/733,444 by the USPTO.

2. Upon information and belief, on March 1, 2011, Reckitt Benckiser Inc. submitted to the USPTO the "Certificate of Conversion" of the original applicant -- Reckitt Benckiser Inc., a corporation of Delaware -- to Reckitt Benckiser LLC, a limited liability company of Delaware. The "Certificate of Conversion" was effective January 1, 2011. The USPTO recorded the submission at Reel 4486, Frame 0252.

3. The only basis for application Serial No. 77/733,444 is currently Section 1(b) of the Trademark Act, 15 USC §1051(b).

4. Reckitt Benckiser Inc., and now Reckitt Benckiser LLC (hereinafter "Applicant") through its Application Serial No. 77/733,444 seeks to register the mark shown above for Class 5: "air freshening preparations; air purifying preparations; room air fresheners; air deodorant; preparations for neutralizing odours on carpeting, textiles, surfaces and in the air"; and for Class 11: "electric and battery powered dispensers for room fragrances, air fresheners and room deodorants for scenting, purifying or freshening the atmosphere; parts and fittings for all the aforesaid goods sold as a unit therewith." ("Applicant's Goods")

5. Application Serial No. 77/733,444 includes the following description of the mark: "The mark consists of a stylized white and blue bubble design with white highlights, grey shading, a blue-grey shadow, and a blue silhouette with a second smaller identical bubble design appearing above to the upper right of the larger." Application Serial No. 77/733,444 includes the following claim of color: "The color(s) blue, white and grey is/are claimed as a feature of the mark."

6. Upon information and belief, Applicant's bubbles design will not be perceived by consumers as a trademark indicating origin of Applicant's Goods.

7. Upon information and belief, Applicant's bubbles design will be perceived by consumers as merely a single element of overall trade dress and it will not create a commercial impression distinct from the overall trade dress.

8. Upon information and belief, Applicant's bubbles design does not function as a trademark, lacks inherent distinctiveness, and is incapable of denoting the origin of Applicant's Goods under Sections 1, 2 and 45 of the Trademark Act, 15 USC §§ 1051, 1052 and 1127.

9. Upon information and belief, Applicant's bubbles design will be perceived by consumers as a nondistinctive background and not as a source indicator.

10. Alternatively, in the event that the Board determines that Applicant's alleged bubbles design functions as a mark, upon information and belief, Opposer has superior, prior copyright and trademark rights in Opposer's bubbles design Mark.

11. Since a date prior to Applicant's filing date, Opposer has been, and is now, using the mark shown below ("Opposer's bubbles design Mark") on and in connection with certain of Opposer's air freshening products ("Opposer's Goods").



12. Opposer is the owner of Copyright No. VA 1-759-846, which issued on January 10, 2011.

13. Upon information and belief, Applicant's use or intended use of a copy or representation of Opposer's copyrighted bubbles design as a trademark for Applicant's Goods is calculated to cause confusion, mistake or deception in the marketplace with respect to the origin of Applicant's Goods, and the relationship of Opposer to Applicant.

14. The confusion which is likely to be caused in the marketplace regarding the source of Opposer's Goods and Applicant's Goods will be injurious to Opposer.

15. Opposer through its predecessors and licensees has used Opposer's bubble design Mark to identify certain of its air freshening products in interstate commerce in the United States prior to the filing of application Serial No. 77/733,444.

16. Opposer, through its licensee, Car-Freshner Corporation, continues to use Opposer's bubble design Mark to identify Opposer's Goods in interstate commerce in the United States.

17. Upon information and belief, Applicant has not used Applicant's bubbles design Mark in commerce on or in connection with Applicant's Goods.

18. Upon information and belief, Applicant did not use Applicant's bubbles design Mark in commerce on or in connection with Applicant's Goods prior to April 17, 2009 (the filing date of Applicant's CTM Application).

19. Upon information and belief, Opposer alleges the depiction shown below is how Applicant is using and/or intends to use the bubbles design shown in application Serial No. 77/733,444.



20. Applicant's bubbles design Mark is confusingly similar to Opposer's bubbles design Mark, including the size of the bubbles, a small bubble in close proximity to a larger bubble, and the same colors -- blue and white.

21. Applicant's Goods in Application Serial No. 77/733,444 are identical or related to Opposer's Goods.

22. Upon information and belief, Applicant Goods using Applicant's bubbles design Mark are intended to be distributed through the same or overlapping channels of trade and to the same classes of purchasers as Opposer's Goods under Opposer's bubbles design Mark.

23. The use and registration of Applicant's bubbles design Mark will enable Applicant to trade upon and utilize the goodwill established by Opposer in Opposer's bubbles design Mark.

24. Upon information and belief, Opposer avers that Applicant's alleged bubbles design Mark so resembles Opposer's bubbles design Mark (trademark and copyright) as to be likely, if used in connection with Applicant's Goods in Class 5: "air freshening preparations; air purifying preparations; room air fresheners; air deodorant; preparations for neutralizing odours on carpeting, textiles, surfaces and in the air"; and in Class 11: "electric and battery powered dispensers for room fragrances, air fresheners and room deodorants for scenting, purifying or freshening the atmosphere; parts and fittings for all the aforesaid goods sold as a unit therewith," to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to

Opposer and its reputation, all in violation of Section 2(d) of the Trademark Act, 15 USC §1052(d).

25. Opposer, upon information and belief, avers that members of the relevant consuming public are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's Goods to be marketed under Applicant's bubbles design Mark and misled into believing that such goods are produced by, emanate from or are in some way associated with Opposer, to the damage and detriment of Opposer and its reputation.

26. Upon information and belief, the *bona fides* of Applicant's intent-to-use its bubbles design Mark is not apparent from materials of record in the subject application, and Opposer therefore challenges same and leaves Applicant to its proofs with regard to the nature and sufficiency of its intent to use at the time of filing Application Serial No. 77/733,444, and at all times subsequent thereto.

27. Opposer, upon information and belief, avers that it will be damaged by the registration of Applicant's bubbles design Mark, in that Applicant's alleged mark does not function as a trademark, and alternatively, is confusingly similar to Opposer's bubbles design Mark, and will be used in connection with goods identical/or related to Opposer's Goods.

WHEREFORE, Opposer, Julius Sämann Ltd., prays that this Opposition be sustained, and the application for registration of Applicant's bubbles design Mark be denied.

#### **POWER OF ATTORNEY**

Opposer has appointed ROBERTA S. BREN, and the following attorneys of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., as its attorneys with full powers of substitution and revocation, to file and prosecute this opposition proceeding and to transact all business in the Patent and Trademark Office in connection herewith:



Norman F. Oblon  
Marvin J. Spivak  
Gregory J. Maier  
Arthur I. Neustadt  
David J. Kera  
Jeffrey H. Kaufman  
Roberta S. Bren  
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Robert T. Pous  
Charles L. Gholz  
Jean-Paul Lavalleye  
Stephen G. Baxter  
Richard L. Treanor  
Steven P. Weihrouch  
Richard L. Chinn

Members of the Bar of Virginia (except as indicated)

\*Member of the Bar other than Virginia

**Please address all correspondence to ROBERTA S. BREN at OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., 1940 Duke Street, Alexandria, Virginia 22314.**

If filed online, the required filing fee of \$600.00 for this Opposition is being submitted through ESTTA. The Director is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-2014.

Respectfully submitted,

JULIUS SÄMANN LTD.

By: Roberta S. Bren  
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Dated: September 26, 2011

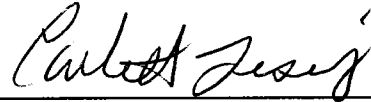
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Counsel for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served on counsel for Applicant at the correspondence address as identified by the records of the U.S. Patent and Trademark Office this 26<sup>th</sup> day of September, 2011, by sending same, via First Class mail, postage prepaid, to:

Mark Lerner, Esquire  
SATTERLEE STEPHENS BURKE & BURKE LLP  
230 Park Ave Room 1130  
New York, NY 10169-0079

A handwritten signature in cursive script, appearing to read "Carlette Lisenby", written over a horizontal line.

Carlette Lisenby